

Title	Juvenile Law—Educational Advocacy (amend Cal. Rules of Court, rules 1456, 1460, 1461, 1493, 1496, and 1499; amend Cal. Stds. Jud. Admin. § 24; revise Judicial Council forms JV-535 and JV-536)
Summary	The proposal would amend rules and forms and amend section 24 of the California Standards of Judicial Administration to provide procedures for the judicial appointment of a responsible adult as an educational advocate to make educational decisions for children whose parents' right to make educational decisions for them has been limited by the court.
Source	Family and Juvenile Law Advisory Committee Hon. Michael Nash and Hon. Mary Ann Grilli, Co-chairs
Staff	Corby Sturges, 415-865-4220, corby.sturges@jud.ca.gov Christopher Wu, 415-865-7721, christopher.wu@jud.ca.gov
Discussion	<p>In 2002, California law governing the appointment of an educational advocate for a child changed significantly. Assembly Bill 886 amended sections 361 and 726 of the Welfare and Institutions Code to require the juvenile court to appoint a responsible adult as an educational advocate to make educational decisions for a child whenever the court has specifically limited a parent's right to make those decisions. The proposed amendments to rule 1499 and revisions to form JV-535, <i>Order Limiting Parents' Right to Make Educational Decisions for the Child and Recommendation for Surrogate Parent Appointment—Juvenile</i>, would establish a procedure for appointing this responsible adult as an educational advocate in conformity with the statutory mandates.</p> <p>Senate Bill 1677 amended sections 366, 366.3, and 727.2 of the Welfare and Institutions Code to require the juvenile court to consider at each status review hearing whether to limit a parent's right to make educational decisions for his or her child. The proposed amendments to rules 1456, 1460, 1461, 1493, and 1496 would incorporate these new requirements into the status review hearing procedures.</p> <p>SB 1677 also amended section 7579.5 of the Government Code to revise the appointment conditions for surrogate parents. The amendment to section 7579.5(a) makes clear that a local educational agency may appoint a surrogate parent for a child who may need special education only when the court has been unable to identify a responsible adult to make educational decisions for the child. In</p>

addition, new section 7579.5(h) requires the local educational agency to terminate the appointment of a surrogate parent who does not perform his or her duties or who has a conflict of interest. The proposed amendments to rule 1499 and revisions to forms JV-535 and JV-536, *Local Educational Agency Response to JV-535—Appointment of Surrogate Parent*, would reflect these new requirements.

The rules in this proposal have also been revised to reflect the policy of the council, effective January 1, 2001, to draft rules in plain English.

The text of the proposed amended rules is attached at pages 3–12.

The proposed revised forms are attached at pages 13–15.

The relevant portions of Assembly Bill 886 and Senate Bill 1677 are attached at pages 16–24.

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Attachments

Rules 1456, 1460, 1461, 1493, 1496, and 1499 of the California Rules of Court and section 24 of the California Standards of Judicial Administration would be amended, effective January 1, 2004, to read:

**Rule 1456. Orders of the court**

(a)–(b) \* \* \*

(c) **[Limitations on parental control (§§ 245.5, 361, 362, Gov. Code, § 7579.5)]**

(1)–(2) \* \* \*

(3) ~~The court must consider the educational needs of the child and, if appropriate, proceed under Education Code section 56156 and Government Code section 7579.5.~~ The court must consider whether it is necessary to limit the right of the parent or guardian to make educational decisions for the child. If the court limits this right, it must appoint a responsible adult as the educational advocate under rule 1499 to make educational decisions for the child. Any limitation on the right of a parent or guardian to make educational decisions for the child must be specified in the court order.

**Rule 1460. Six-month review hearing**

(a)–(d) \* \* \*

(e) **[Determinations—burden of proof (§§ 366, 366.1, 366.21, 364)]**

(1)–(4) \* \* \*

(5) The court must consider whether it is necessary to limit the right of the parent or guardian to make educational decisions for the child. If the court limits this right, it must appoint a responsible adult as the educational advocate under rule 1499 to make educational decisions for the child.

(f) **[Conduct of hearing (§ 366.21)]** -If the court does not return custody of the child,

(1)–(3) \* \* \*

1 (4) A judgment, order, or decree setting a hearing under section 366.26 may  
2 be reviewed on appeal following the order of the 366.26 hearing only if  
3 the following have occurred:  
4

5 (A)–(B) \* \* \*

6  
7 ~~Review on appeal of the order setting a hearing under section 366.26 is limited~~  
8 ~~to issues raised in a previous petition for extraordinary writ that were supported~~  
9 ~~by an adequate record.~~

10  
11 (5) Review on appeal of the order setting a hearing under section 366.26 is  
12 limited to issues raised in a previous petition for extraordinary writ that  
13 were supported by an adequate record.  
14

15 (6) \* \* \*

16  
17 (7) When the court orders a hearing under section 366.26, the court must  
18 advise orally all parties present, and by first class mail for parties not  
19 present, that, if the party wishes to preserve any right to review on appeal  
20 of the order setting the hearing under section 366.26, the party must  
21 seek an extraordinary writ by filing  
22

23 ~~(A) a Notice of Intent to File Writ Petition and Request for Record form~~  
24 ~~(JV 820) or other A notice of the party's intent to file a writ petition~~  
25 ~~and a request for the record, which may be submitted on form JV-~~  
26 ~~820, Notice of Intent to File Writ Petition and Request for Record,~~  
27 ~~and~~  
28

29 ~~(B) a Writ Petition—Juvenile form (JV 825) or other A petition for an~~  
30 ~~extraordinary writ, which may be submitted on form 825, Writ~~  
31 ~~Petition—Juvenile.~~  
32

33 (8) Within 24 hours of the review hearing, the clerk of the court must provide  
34 notice by first-class mail ~~must be provided by the clerk of the court~~ to the  
35 last known address of any party who is not present when the court orders  
36 the hearing under section 366.26.  
37

38 (A) This notice must include the advice required by subdivision (f)(7) of  
39 this rule.  
40

41 (9) Copies of Judicial Council form Writ Petition—Juvenile (JV-825) and  
42 Judicial Council form Notice of Intent to File Writ Petition and Request

1                   for Record (JV-820) must be available in the courtroom, and must  
2                   accompany all mailed notices of the advice.

3  
4                   ~~(8)~~(10) \* \* \*

5  
6                   (g)–(i) \* \* \*

7  
8       **Rule 1461. Twelve-month review hearing**  
9

10       (a) **[Requirement for 12-month review; setting of hearing; notice (§ 366.21)]**

11       The case of any dependent child whom the court has removed from the  
12       custody of the parent or guardian ~~shall~~must be set for review hearing within  
13       12 months ~~after~~of the date the child entered foster care, as defined in rule  
14       1401, and no later than 18 months from the date of the initial removal. Notice  
15       of the hearing ~~shall~~must be given as provided in rule 1460.

16  
17       (b) **[Reports (§ 366.21)]** -Before the hearing the petitioner ~~shall~~must prepare a  
18       report describing services offered to the family and progress made. The report  
19       ~~shall~~must include:

20  
21       (1)–(2) \* \* \*

22  
23       (c) **[Conduct of hearing]** -At the hearing, the court ~~shall~~must state on the record  
24       that the court has read and considered the report of petitioner, the report of any  
25       court-appointed child advocate, and other evidence, and ~~shall~~must proceed as  
26       follows:

27  
28       (1) If the child has been removed from the custody of the parent or guardian,  
29       the court ~~shall~~must order the child returned to the parent or guardian  
30       unless the court finds the petitioner has established, by a preponderance  
31       of the evidence, that return would create a substantial risk of detriment to  
32       the child. Failure of the parent or guardian to regularly participate and  
33       make substantive progress in a court-ordered treatment program ~~shall be~~  
34       is prima facie evidence that return would be detrimental.

35  
36       (2) \* \* \*

37  
38       (3) If the court does not order return of the child, the court ~~shall~~must specify  
39       the factual basis for its finding of risk of detriment to the child. The court  
40       ~~shall~~must order a permanent plan unless the court determines that there is  
41       a substantial probability of return within 18 months of the removal of the  
42       child. In order to find a substantial probability of return within the 18-  
43       month period, the court must find all of the following:

1  
2 (A)–(C) \* \* \*

- 3  
4 (4) If the child is not returned to the custody of the parents or guardians, the  
5 court ~~shall~~must consider whether reasonable services have been provided  
6 or offered. The court ~~shall~~must find that:

7  
8 (A)–(B) \* \* \*

9  
10 (5) \* \* \*

- 11  
12 (6) The court must consider whether it is necessary to limit the right of the  
13 parent or guardian to make educational decisions for the child. If the court  
14 limits this right, it must appoint a responsible adult as the educational  
15 advocate under rule 1499 to make educational decisions for the child.  
16

17 (d) **[Determinations and orders]** -The court ~~shall~~must proceed as follows:

18  
19 (1)–(3) \* \* \*

- 20  
21 (4) If the court orders a hearing under section 366.26, termination of  
22 reunification services ~~shall~~must also be ordered. Visitation ~~shall~~may  
23 continue unless the court finds it would be detrimental to the child.

- 24  
25 (5) If the court orders a hearing under section 366.26, the court ~~shall~~must  
26 direct that an assessment be prepared as stated in section 366.21(i).

- 27  
28 (6) A judgment, order, or decree setting a hearing under section 366.26 is not  
29 an immediately appealable order. Review ~~shall~~may be sought only by  
30 filing Judicial Council form *Writ Petition—Juvenile* (JV-825) or other  
31 petition for extraordinary writ. If a party wishes to preserve any right to  
32 review on appeal of the findings and orders made under this rule, the  
33 party is required to seek an extraordinary writ under rules 39.1B and  
34 1436.5.

- 35  
36 (7) A judgment, order, or decree setting a hearing under section 366.26 may  
37 be reviewed on appeal following the order of the 366.26 hearing only if  
38 the following have occurred:

39  
40 (A) An extraordinary writ was sought by the timely filing of Judicial  
41 Council form *Writ Petition—Juvenile* (JV-825) or other petition for  
42 extraordinary writ; and  
43

(B) The petition for extraordinary writ was summarily denied or otherwise not decided on the merits.

(8) Review on appeal of the order setting a hearing under section 366.26 is limited to issues raised in a previous petition for extraordinary writ that were supported by an adequate record.

(8)(9) Failure to file a petition for extraordinary writ review within the period specified by rules 39.1B and 1436.5, to substantively address the issues challenged, or to support the challenge by an adequate record, ~~shall~~ precludes subsequent review on appeal of the findings and orders made under this rule.

(9)(10) When the court orders a hearing under section 366.26, the court ~~shall~~ must advise orally all parties present, and by first class mail for parties not present, that, if the party wishes to preserve any right to review on appeal of the order setting the hearing under section 366.26, the party is required to must seek an extraordinary writ by filing

(A) ~~a Notice of Intent to File Writ Petition and Request for Record form (JV-820) or other~~ A notice of intent to file a writ petition and a request for the record, which may be submitted on form JV-820, Notice of Intent to File Writ Petition and Request for Record, and

(B) ~~a Writ Petition—Juvenile form (JV-825) or other~~ A petition for an extraordinary writ, which may be submitted on form JV-825, Writ Petition—Juvenile.

(11) Within 24 hours of the review hearing, ~~the clerk of the court must provide~~ notice by first-class mail ~~shall be provided by the clerk of the court~~ to the last known address of any party who is not present when the court orders the hearing under section 366.26.

(A) This notice must include the advice required by subdivision (d)(10) of this rule.

(12) Copies of Judicial Council form *Writ Petition—Juvenile* (JV-825) and Judicial Council form *Notice of Intent to File Writ Petition and Request for Record* (JV-820) ~~shall~~ must be available in the courtroom, and ~~shall~~ must accompany all mailed notices of the advice.

1           ~~(40)~~(13) If the court orders a hearing under section 366.26, the court ~~shall~~  
2           must order that no notice of the hearing under section 366.26 be provided  
3           to any of the following:  
4

5           (A)–(B) \* \* \*

6  
7       (e) **[Setting a hearing under section 366.26]** -At the 12-month review hearing,  
8       the court ~~shall~~may not set a hearing under section 366.26 to consider  
9       termination of the rights of only one parent unless  
10

11       (1) that parent is the only surviving parent, or  
12

13       (2) the rights of the other parent have been terminated by a California court  
14       of competent jurisdiction or by a court of competent jurisdiction of  
15       another state under the statutes of that state, or  
16

17       (3) the other parent has relinquished custody of the child to the county  
18       welfare department.  
19

20  
21 **Rule 1493. Orders of the court**  
22

23       (a)–(d) \* \* \*

24  
25       (e) **[Wardship orders (§§ 726, 727, 727.1, 730, 731)]** The court may make any  
26       reasonable order for the care, supervision, custody, conduct, maintenance,  
27       support, and medical treatment of a child declared a ward.  
28

29       (1)–(4) \* \* \*

30  
31       (5) ~~The court must consider the educational needs of the child and, if~~  
32       ~~appropriate, proceed under Education Code section 56156 and~~  
33       ~~Government Code section 7579.5. Any limitation on the right of a parent~~  
34       ~~or guardian to make education decisions for the child must be specified in~~  
35       ~~the court order. The court must consider whether it is necessary to limit~~  
36       the right of the parent or guardian to make educational decisions for the  
37       child. If the court limits this right, it must appoint a responsible adult as  
38       the educational advocate under rule 1499 to make educational decisions  
39       for the child.  
40

41       (f)–(g) \* \* \*



1 **Rule 1496. Reviews and permanency planning hearings**

- 2
- 3 (a) **[Six-month status review hearings (§§ 727.2, 11404.1)]** A status review
- 4 hearing must be conducted no less frequently than once every six months from
- 5 the date the ward entered foster care, for any ward removed from the custody
- 6 of his or her parent or guardian under section 726 and placed under section
- 7 727. The court may consider the hearing at which the initial order for
- 8 placement is made as the first status review hearing.
- 9

10 (1)–(2)

- 11
- 12 (3) *(Findings and orders (§ 727.2(d))* The court must consider the safety of
- 13 the ward and make findings and orders that determine the following:
- 14

15 (A)–(B) \* \* \*

16

17 (C) Whether it is necessary to limit the right of the parent or guardian to

18 make educational decisions for the child. If the court limits this

19 right, it must appoint a responsible adult as the educational advocate

20 under rule 1499 to make educational decisions for the child.

21

22 ~~(C)~~(D) \* \* \*

23

24 ~~(D)~~(E) \* \* \*

25

26 ~~(E)~~(F) \* \* \*

27

28 (4) \* \* \*

29

30

31 **Rule 1499. ~~Surrogate parent appointment~~ Appointment of responsible adult as**

32 **educational advocate**

33

- 34 (a) **[Parent's educational rights limited (§§ 361, 726)]** -The juvenile court may
- 35 ~~make an appropriate order~~ specifically limiting a parent's or a guardian's right
- 36 to make educational decisions for a child who is the subject of a petition under
- 37 Welfare and Institutions Code section 300, 601, or 602, but the limitations
- 38 ~~must may~~ not exceed those necessary to protect the child. The court must order
- 39 ~~must be prepared any limitation~~ on form JV-535, *Order Limiting Parent's*
- 40 *Right to Make Educational Decisions for the Child and Recommendation for*
- 41 *Surrogate Parent Appointment*Appointing Responsible Adult as Educational
- 42 Advocate—Juvenile.
- 43

1 **(b) [Appointment of responsible adult as educational advocate (§§ 361, 726)]**

2 Whenever the court limits the right of a parent or guardian to make educational  
3 decisions for the child, the court must at the same time use form JV-535 to  
4 appoint a responsible adult as an educational advocate to make educational  
5 decisions for the child until

6  
7 (1) The child reaches 18 years of age, unless the child then chooses not to  
8 make educational decisions or is deemed incompetent by the court;

9  
10 (2) The court appoints another responsible adult to make educational  
11 decisions for the child under this rule;

12  
13 (3) The court restores the right of the parent or guardian to make educational  
14 decisions for the child; or

15  
16 (4) The child is placed in a planned permanent living arrangement under  
17 sections 366.21(g)(3), 366.22, 366.26, 727.3(b)(5), or 727.3(b)(6) of the  
18 Welfare and Institutions Code, in which case the foster parent or relative  
19 caregiver will have the right to make educational decisions for the child  
20 under section 56055(a) of the Education Code unless excluded by the  
21 court.

22  
23 **(c) [Limits on appointment (§§ 361, 726)]**

24  
25 (1) The court should consider appointing a responsible adult relative,  
26 nonrelative extended family member, family friend, mentor, or Court  
27 Appointed Special Advocate (CASA) as the educational advocate if one  
28 is available and willing to serve.

29  
30 (2) The court may not appoint any individual as the educational advocate if  
31 that person would have a conflict of interest as defined by section 361(a)  
32 or section 726(b).

33  
34 **(b)(d) [Appointment of surrogate parent (Gov. Code, § 7579.5)]**

35  
36 (1) If the court has specifically limited ordered the specific limitation of a  
37 parent's or a guardian's right to make educational decisions for the a  
38 child; but cannot identify a responsible adult to make educational  
39 decisions for the child, and the child may be eligible for special education  
40 and related services or already has an individualized education program,  
41 the court must use form JV-535 to refer the child to the responsible local  
42 educational agency must for prompt appointment of promptly appoint a  
43 surrogate parent as provided in under Government Code section 7579.5.

1  
2  
3 (2) ~~Under Government Code section 7579.5(e), the local educational agency~~  
4 ~~must select, as a first preference, a relative caretaker, foster parent, or~~  
5 ~~Court Appointed Special Advocate (CASA) if any of these individuals is~~  
6 ~~willing and able to serve as a surrogate parent. If the court refers a child~~  
7 ~~to the local educational agency for appointment of a surrogate parent, the~~  
8 ~~court must order form JV-536, *Local Educational Agency Response to*~~  
9 ~~*JV-535—Appointment of Surrogate Parent*, served by first-class mail on~~  
10 ~~the local educational agency along with form JV-535.~~

11  
12 (3) ~~To assist the local educational agency in selecting a statutorily preferred~~  
13 ~~surrogate, the court may recommend a surrogate who is willing and able~~  
14 ~~to serve. This recommendation must be made in writing on form JV 535~~  
15 ~~and must be served on the local educational agency by first class mail.~~

16  
17 (4)(3) ~~Whenever the local educational agency has appointed appoints a~~  
18 ~~surrogate parent for a dependent or ward under Government Code section~~  
19 ~~7579.5(a)(1) or removed a surrogate parent under Government Code~~  
20 ~~section 7579.5(g), it must notify the court on form JV-536 within 21~~  
21 ~~calendar days of the date of the appointment.~~

22  
23 (4) ~~Whenever the local educational agency terminates the appointment of a~~  
24 ~~surrogate parent for a dependent or ward under Government Code section~~  
25 ~~7579.5(h) or replaces the surrogate parent for any other reason, it must~~  
26 ~~notify the court on form JV-536 within 21 calendar days of the date of the~~  
27 ~~termination or replacement.~~

28  
29 (e) ~~[Local educational agency response] The court must also serve the local~~  
30 ~~educational agency by first class mail with form JV 536, *Local Educational*~~  
31 ~~*Agency Response to JV 535—Appointment of Surrogate Parent*. Form JV 536~~  
32 ~~must be completed by the local educational agency upon the appointment of a~~  
33 ~~surrogate parent and returned to the court within 21 calendar days from the~~  
34 ~~date of the appointment.~~

## 35 36 **Sec. 24. Juvenile Court Matters**

37  
38 (a)–(g) \* \* \*

39  
40 (h) **[Role of the juvenile court]** The juvenile court should:

41  
42 (1)–(4) \* \* \*

1 (5) Make appropriate orders limiting the educational rights of a parent or  
2 guardian who cannot be located or identified, or who is unwilling or  
3 unable to be an active participant in ensuring that the child's ~~special~~  
4 educational needs are met, and ~~request that the local education agency~~  
5 ~~appoint a surrogate parent~~ appoint a responsible adult as educational  
6 advocate for such a child or, if one cannot be identified, refer the child to  
7 the local educational agency for special education and related services  
8 and appointment of a surrogate parent. (Welf. & Inst. Code, §§ 361, 726;  
9 Ed. Code, § 56156; Gov. Code, § 7579.5.)

10  
11 (6) \* \* \*

CHILD'S ATTORNEY (Name, state bar number, and address):   TELEPHONE NO. (Optional): E-MAIL ADDRESS (Optional):  CHILD'S NAME:	<b>FOR COURT USE ONLY</b>   <h1 style="margin: 0;">DRAFT-1</h1>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	CASE NUMBER:
<b>ORDER LIMITING PARENT'S RIGHT TO MAKE EDUCATIONAL DECISIONS FOR THE CHILD and APPOINTING RESPONSIBLE ADULT AS EDUCATIONAL ADVOCATE—JUVENILE</b>	

1. a. Date of hearing: Dept.: Room:
- b. Judicial officer (name):
- c. Persons present:
- ☐ Child   ☐ Child's attorney   ☐ Mother   ☐ Mother's attorney   ☐ Father  
☐ Father's attorney   ☐ Guardian   ☐ Deputy district attorney   ☐ Probation officer/social worker  
☐ Deputy county counsel   ☐ CASA   ☐ Other:
2. Child's name: Date of birth: ☐ General Education  
☐ Referred for assessment
3. Child's school district: ☐ Special Education
4. Child's school (name and address):
5. Child's social worker:
6. Child's supervising social worker:
7. Child's probation officer:

**8. After consideration of the evidence, the court finds and orders under Welfare and Institutions Code section 361(a) or 726:**

The right of the ☐ mother ☐ father ☐ mother and father ☐ guardian  
to make educational decisions for the child is specifically limited by this court.

Parent(s) or legal guardian(s) whose right to make educational decisions for the child is being limited (name(s)):

- ☐ a. The child is placed in a planned permanent living arrangement under Welfare and Institutions Code sections 366.21(g)(3), 366.22, 366.26, 727.3(b)(5), or 727.3(b)(6) and:
- (1) ☐ the following foster parents or relative caregivers may represent the child in educational matters under Education Code section 56055(a) without the need for court appointment.
- (2) ☐ the following foster parents or relative caregivers may not make educational decisions for the child under Education Code section 56055(b).

Name(s):  
 Address:  
 Telephone No.:  
 Relationship to Child:

CHILD'S NAME:	CASE NUMBER:
---------------	--------------

- ☐ b. The following responsible adult is appointed to make educational decisions for the child until ☐ the next hearing in this matter ☐ the court orders otherwise.

Name:

Address:

Telephone No.:

Relationship to Child:

- ☐ c. The court cannot identify a responsible adult to make educational decisions for the child, and the child is potentially eligible for special education and related services or already has an individualized education program. Therefore, the court refers the child to the local educational agency for prompt appointment of a surrogate parent for the child under Government Code section 7579.5. The local educational agency must notify the court of the identity of the appointee on attached form JV-536 within 21 calendar days of the date of the appointment.

9. A copy of this order and recommendation must be served on the local educational agency by:

- (1) ☐ a representative of the county welfare department.  
(2) ☐ a representative of the county probation department.  
(3) ☐ the clerk of this court.

☐ Attachments (If box 8.c. is checked, form JV-536, *Local Educational Agency Response to JV-535—Appointment of Surrogate Parent*, must be attached.)

10. **This order applies to any school or school district in the State of California.**

Date:

\_\_\_\_\_  
(JUDICIAL OFFICER)

CHILD'S ATTORNEY (Name, state bar number, and address):   TELEPHONE NO. (Optional): E-MAIL ADDRESS (Optional):  CHILD'S NAME:	FOR COURT USE ONLY   <h1 style="text-align: center;">DRAFT-1</h1>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
<b>LOCAL EDUCATIONAL AGENCY RESPONSE TO JV-535—APPOINTMENT OF SURROGATE PARENT</b>	CASE NUMBER:

This form must be completed and returned to the court at the address listed above within 21 calendar days of the date of the appointment of the surrogate parent.

1. Child's name:
2. Child's school:
3. Address of child's school:
4. School personnel contact (name, title, and telephone no.):
5. a. Appointed surrogate parent's name: ☐ New ☐ Replacement
- b. Appointed surrogate parent's address:
- c. Appointed surrogate parent's telephone no.:
- d. Appointed surrogate parent's relationship to the child:
6. ☐ The previous surrogate parent was terminated under section 7579.5(h) of the Government Code.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
(TITLE)

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SEC. 1. \* \* \*

SEC. 2. Section 361 of the Welfare and Institutions Code is amended to read:

361. (a) In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all those limitations. Any limitation on the right of the parent or guardian to make educational decisions for the child shall be specifically addressed in the court order. The limitations may not exceed those necessary to protect the child. Whenever the court specifically limits the right of the parent or guardian to make educational decisions for the child, the court shall at the same time appoint a responsible adult to make educational decisions for the child until one of the following occurs:

(1) The minor reaches 18 years of age, unless the child chooses not to make educational decisions for himself or herself, or is deemed by the court to be incompetent.

(2) Another responsible adult is appointed to make educational decisions for the minor pursuant to this section.

(3) The right of the parent or guardian to make educational decisions for the minor is fully restored.

(4) A successor guardian or conservator is appointed.

(5) The child is placed into long-term foster care pursuant to paragraph (3) of subdivision (g) of Section 366.21, Section 366.22, or Section 366.26, at which time the foster parent shall have the right to represent the child in educational matters pursuant to Section 56055 of the Education Code.

An individual who would have a conflict of interest in representing the child may not be appointed to make educational decisions. For purposes of this section, "an individual who would have a conflict of interest," means a person having any interests that might restrict or bias his or her ability to make educational decisions, including, but not limited to, those conflicts of interest prohibited by Section 1126 of the Government Code, and the receipt of compensation or attorneys' fees for the provision of services pursuant to this section. A foster parent may not be deemed to have a conflict of interest solely because he or she receives compensation for the provision of services pursuant to this section.

(b) Subdivision (a) may not be construed to limit the ability of a parent to voluntarily relinquish his or her child to the State Department of Social Services or to a licensed county adoption agency at any time while the child is a dependent child of the juvenile court, if the department or agency is willing to accept the relinquishment.



(c)–(e) \* \* \*

SEC. 3. Section 726 of the Welfare and Institutions Code is amended to read:

726. (a) In all cases in which a minor is adjudged a ward or dependent child of the court, the court may limit the control to be exercised over the ward or dependent child by any parent or guardian and shall in its order, clearly and specifically set forth all those limitations, but no ward or dependent child shall be taken from the physical custody of a parent or guardian, unless upon the hearing the court finds one of the following facts:

(1) That the parent or guardian is incapable of providing or has failed or neglected to provide proper maintenance, training, and education for the minor.

(2) That the minor has been tried on probation while in custody and has failed to reform.

(3) That the welfare of the minor requires that custody be taken from the minor's parent or guardian.

(b) Whenever the court specifically limits the right of the parent or guardian to make educational decisions for the minor, the court shall at the same time appoint a responsible adult to make educational decisions for the child until one of the following occurs:

(1) The minor reaches 18 years of age, unless the child chooses not to make educational decisions for himself or herself, or is deemed by the court to be incompetent.

(2) Another responsible adult is appointed to make educational decisions for the minor pursuant to this section.

(3) The right of the parent or guardian to make educational decisions for the minor is fully restored.

(4) A successor guardian or conservator is appointed.

(5) The child is placed into long-term foster care pursuant to paragraph (3) of subdivision (g) of Section 366.21, Section 366.22, or Section 366.26, at which time the foster parent shall have the right to represent the child in educational matters pursuant to Section 56055 of the Education Code.

An individual who would have a conflict of interest in representing the child, as specified under federal regulations, may not be appointed to make educational decisions. For purposes of this section, "an individual who would have a conflict of interest," means a person having any interests that might restrict or bias his or her ability to make educational decisions, including, but not limited to, those conflicts of interest prohibited by Section 1126 of the Government Code, and the receipt of compensation or attorneys' fees for the provision of services pursuant to this section. A foster parent may not be deemed to have a conflict of interest solely because he or she receives compensation for the provision of services pursuant to this section.

(c) \* \* \*

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 56028 of the Education Code is amended to read:

56028. (a) "Parent," includes any of the following:

- (1) A person having legal custody of a child.
- (2) Any adult pupil for whom no guardian or conservator has been appointed.
- (3) A person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives). "Parent" also includes a parent surrogate.

(b) "Parent" does not include the state or any political subdivision of government.

(4) A foster parent if the natural parents' authority to make educational decisions on the child's behalf has been specifically limited by court order in accordance with subsection (b) of Section 300.20 of Title 34 of the Code of Federal Regulations.

SEC. 1.5. Section 7579.5 of the Government Code is amended to read:

7579.5. (a) A local educational agency shall appoint a surrogate parent for a child in accordance with clause (iii) of paragraph (2) of subsection (c) of Section 300.515 of Title 34 of the Code of Federal Regulations under one or more of the following circumstances:

(1) (A) The child is adjudicated a dependent or ward of the court pursuant to Section 300, 601, or 602 of the Welfare and Institutions Code upon referral of the child to the local educational agency for special education and related services, or if the child already has a valid individualized education program, (B) the court has specifically limited the right of the parent or guardian to make educational decisions for the child, and (C) the child has no responsible adult to represent him or her pursuant to Section 361 or 726 of the Welfare and Institutions Code or Section 56055 of the Education Code.

(2) No parent for the child can be identified.

(3) The local educational agency, after reasonable efforts, cannot discover the location of a parent.

(b) When appointing a surrogate parent, the local educational agency shall, as a first preference, select a relative caretaker, foster parent, or court-appointed special advocate, if any of these individuals exists and is willing and able to serve. If none of these individuals is willing or able to act as a surrogate parent, the local educational agency shall select the surrogate parent of its choice. If the child is moved from the home of the relative caretaker or foster parent who has been appointed as a surrogate parent, the local educational agency shall appoint another surrogate parent if a new appointment is necessary to ensure adequate representation of the child.

(c) For the purposes of this section, the surrogate parent shall serve as the child's parent and shall have the rights relative to the child's education that a parent has under Title 20 (commencing with Section 1400) of the United States Code and pursuant to Part 300 of Title 34 (commencing with Section 300.1) of the Code of Federal Regulations. The surrogate parent may represent the child in matters relating to special education and related services, including the identification, assessment, instructional planning and development, educational placement, reviewing and revising the individualized education program, and in all other matters relating to the provision of a free appropriate public education of the child.

Notwithstanding any other provision of law, this representation shall include the provision of written consent to the individualized education program including nonemergency medical services, mental health treatment services, and occupational or physical therapy services pursuant to this chapter.

(d) The surrogate parent is required to meet with the child at least one time. He or she may also meet with the child on additional occasions, attend the child's individualized education program meetings, review the child's educational records, consult with persons involved in the child's education, and sign any consent relating to individualized education program purposes.

(e) As far as practical, a surrogate parent should be culturally sensitive to his or her assigned child.

(f) The surrogate parent shall comply with federal and state law pertaining to the confidentiality of student records and information and shall use discretion in the necessary sharing of the information with appropriate persons for the purpose of furthering the interests of the child.

(g) The surrogate parent may resign from his or her appointment only after he or she gives notice to the local educational agency.

(h) The local educational agency shall terminate the appointment of a surrogate parent if (1) the person is not properly performing the duties of a surrogate parent or (2) the person has an interest that conflicts with interests of the child entrusted to his or her care.

(i) Individuals who would have a conflict of interest in representing the child, as specified under federal regulations, may not be appointed as a surrogate parent. "An individual who would have a conflict of interest," for purposes of this section, means a person having any interests that might restrict or bias his or her ability to advocate for all of the services required to ensure that the child has a free appropriate public education.

(j) Except for individuals who have a conflict of interest in representing the child, and notwithstanding any other law or regulation, individuals who may serve as surrogate

parents include, but are not limited to, foster care providers, retired teachers, social workers, and probation officers who are not employees of a the State Department of Education, the local educational agency, or any other agency that is involved in the education or care of the child.

(1) A public agency authorized to appoint a surrogate parent under this section may select a person who is an employee of a nonpublic agency that only provides noneducational care for the child and who meets the other standards of this section.

(2) A person who otherwise qualifies to be a surrogate parent under this section is not an employee of the local educational agency solely because he or she is paid by the local educational agency to serve as a surrogate parent.

(k) The surrogate parent may represent the child until (1) the child is no longer in need of special education, (2) the minor reaches 18 years of age, unless the child chooses not to make educational decisions for himself or herself, or is deemed by a court to be incompetent, (3) another responsible adult is appointed to make educational decisions for the minor, or (4) the right of the parent or guardian to make educational decisions for the minor is fully restored.

(l) The surrogate parent and the local educational agency appointing the surrogate parent shall be held harmless by the State of California when acting in their official capacity except for acts or omissions that are found to have been wanton, reckless, or malicious.

(m) The Department of Education shall develop a model surrogate parent training module and manual that shall be made available to local educational agencies.

(n) Nothing in this section may be interpreted to prevent a parent or guardian of an individual with exceptional needs from designating another adult individual to represent the interests of the child for educational and related services.

(o) If funding for implementation of this section is provided, it may only be provided from Item 6110-161-0890 of the annual Budget Act.

SEC. 2. Section 358.1 of the Welfare and Institutions Code is amended to read:

358.1. Each social study or evaluation made by a social worker or child advocate appointed by the court, required to be received in evidence pursuant to Section 358, shall include, but not be limited to, a factual discussion of each of the following subjects:

(a)–(d) \* \* \*

(e) If the parent or guardian is unwilling or unable to participate in making an educational decision for his or her child, or if other circumstances exist that compromise

the ability of the parent or guardian to make educational decisions for the child, the county welfare department or social worker shall consider whether the right of the parent or guardian to make educational decisions for the child should be limited. If the study or evaluation makes that recommendation, it shall identify whether there is a responsible adult available to make educational decisions for the child pursuant to Section 361.

(f)–(h) The appropriateness of any relative placement pursuant to Section 361.3; however, this consideration may not be cause for continuance of the dispositional hearing.

SEC. 3. Section 366 of the Welfare and Institutions Code is amended to read:

366. (a) (1) The status of every dependent child in foster care shall be reviewed periodically as determined by the court but no less frequently than once every six months, as calculated from the date of the original dispositional hearing, until the hearing described in Section 366.26 is completed. The court shall consider the safety of the child and shall determine all of the following:

(A)–(B) \* \* \*

(C) Whether there should be any limitation on the right of the parent or guardian to make educational decisions for the child. That limitation shall be specifically addressed in the court order and may not exceed those necessary to protect the child. Whenever the court specifically limits the right of the parent or guardian to make educational decisions for the child, the court shall at the same time appoint a responsible adult to make educational decisions for the child pursuant to Section 361.

(D)–(E) \* \* \*

(b)–(d) \* \* \*

SEC. 4. Section 366.1 of the Welfare and Institutions Code is amended to read:

366.1. Each supplemental report required to be filed pursuant to Section 366 shall include, but not be limited to, a factual discussion of each of the following subjects:

(a)–(d) \* \* \*

(e) If the parent or guardian is unwilling or unable to participate in making an educational decision for his or her child, or if other circumstances exist that compromise the ability of the parent or guardian to make educational decisions for the child, the county welfare department or social worker shall consider whether the right of the parent or guardian to make educational decisions for the child should be limited. If the

supplemental report makes that recommendation, the report shall identify whether there is a responsible adult available to make educational decisions for the child pursuant to Section 361.

(f) \* \* \*

SEC. 5. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a)–(d) \* \* \*

(e) Except as provided in subdivision (f), at the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1)–(3) \* \* \*

(4) Whether there should be any limitation on the right of the parent or guardian to make educational decisions for the child. That limitation shall be specifically addressed in the court order and may not exceed what is necessary to protect the child. If the court specifically limits the right of the parent or guardian to make educational decisions for the child, the court shall at the same time appoint a responsible adult to make educational decisions for the child pursuant to Section 361.

(5)–(9) \* \* \*

(f)–(h) \* \* \*

SEC. 6. Section 706.5 of the Welfare and Institutions Code is amended to read:

706.5. (a)–(b) \* \* \*

(c) At each status review hearing, the social study shall include, but not be limited to, an updated case plan as described in Section 706.6 and the following information:

(1)–(4) \* \* \*

(5) Whether the minor has been or will be referred to educational services and what services the minor is receiving, including special education and related services if the minor has exceptional needs as described in Part 30 (commencing with Section 56000) of Division 4 of Title 2 of the Education Code or accommodations if the child has disabilities as described in Chapter 16 (commencing with Section 701) of Title 29 of the United States Code Annotated. The probation officer or child advocate shall solicit comments from the appropriate local education agency prior to completion of the social study.

(6) If the parent or guardian is unwilling or unable to participate in making an educational decision for his or her child, or if other circumstances exist that compromise the ability of the parent or guardian to make educational decisions for the child, the

probation department shall consider whether the right of the parent or guardian to make educational decisions for the minor should be limited. If the study makes that recommendation, it shall identify whether there is a responsible adult available to make educational decisions for the minor pursuant to Section 726.

(d) \* \* \*

SEC. 7. Section 727.2 of the Welfare and Institutions Code is amended to read:

727.2. The purpose of this section is to provide a means to monitor the safety and well-being of every minor in foster care who has been declared a ward of the juvenile court pursuant to Section 601 or 602 and to ensure that everything reasonably possible is done to facilitate the safe and early return of the minor to his or her home or to establish an alternative permanent plan for the minor.

(a)–(d) \* \* \*

(e) At any status review hearing prior to the first permanency planning hearing, the court shall consider the safety of the minor and make findings and orders which determine the following:

(1)–(2) \* \* \*

(3) Whether there should be any limitation on the right of the parent or guardian to make educational decisions for the minor. That limitation shall be specifically addressed in the court order and may not exceed what is necessary to protect the minor. If the court specifically limits the right of the parent or guardian to make educational decisions for the minor, the court shall at the same time appoint a responsible adult to make educational decisions for the minor pursuant to Section 361.

(4)–(6) \* \* \*

The court shall make these determinations on a case-by-case basis and reference in its written findings the probation officer's report and any other evidence relied upon in reaching its decision.

(f)–(h) \* \* \*

SEC. 8. \* \* \*

SEC. 9. The amendments made by this act to Sections 358.1, 366, 366.1, 366.3, 706.5, and 727.2 of the Welfare and Institutions Code, shall only take effect if Assembly Bill 886 of the 2001-02 Regular Session is enacted.

SEC. 10. The Legislature recommends that the Judicial Council adopt appropriate rules, standards, and forms regarding the implementation of this act and Assembly Bill 886 of

the 2001-02 Regular Session if that bill is enacted.